

Appl. No. 09/303,313
Amdt. Dated January 20, 2005
Reply to Office Action of October 20, 2004

REMARKS

Status of Claims

Claims 21 and 25 are allowed.

Claims 1, 6-11, 22-24 and 27 are canceled.

Claims 2-5, 12, 16-20 and 28 are currently amended.

Claims 2-5, 12-21, 25, 26 and 28-30 are pending.

Allowed claims

Applicants gratefully acknowledge the allowance of claims 21 and 25 in the Office Action dated October 20, 2004.

Objection to Claims/Allowable Subject Matter

In the Office Action claims 2-4, 11 and 13-16 are indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Accordingly, Applicants have amended claim 2 to include all of the limitations of claim 1 (now canceled). The limitations of now-canceled claim 11 have also been incorporated into currently amended claim 2. Claims 3, 4 and 13-16 have been amended to depend from now-allowable claim 2, and are likewise believed to be allowable.

Rejection of Claims Under 35 U.S.C. § 102

Claims 6-10 are rejected in the Office Action of October 20, 2004 as being anticipated under 35 U.S.C. § 102(a) by the MERCK MANUAL OF DIAGNOSTICS AND THERAPY, section 21, chapter 291 (1995) ("MERCK MANUAL"). Claims 6-10 have been canceled.

Claim 27 is rejected as being anticipated under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,924,863 (Sterzer). It is said in the Office Action that Sterzer teaches applying heat to plaque using microwave or radiofrequency energy to at least a temperature of 44°C (col. 2, ll 25+). Applicants respectfully point out, however, that Sterzer's method requires liquifying at least a portion of the fatty plaque without causing death of underlying tissue (col. 5, ll 25-31) and removing the liquid by suctioning (col. 3, ll 8-15). The method of Sterzer does not teach induction of apoptosis in immune cells. Claim 2 has been amended to require that "said heating induces apoptosis in immune cells," and is clearly different than the method taught by Sterzer.

Appl. No. 09/303,313
Amdt. Dated January 20, 2005
Reply to Office Action of October 20, 2004

Rejection of Claims Under 35 U.S.C. § 103(a)

Claims 22-24, 26 and 28-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,924,997 (Campbell) in view of Sterzer. Claims 22-24 have been canceled. Applicants respectfully traverse with respect to claim 26, as currently amended, for at least the reason that Sterzer does not teach inducing apoptosis in inflammatory cells associated with atherosclerotic plaque, and neither does Campbell. Even if, *arguendo*, one were motivated to combine the teachings of Sterzer and Campbell, one of skill in the art at the time of the present invention would, at best, be led to locate a plaque by temperature sensing (col. 2, ll 13-21), to liquify and suction the fatty plaque material (Sterzer, as discussed above), and provide localized drug delivery (Abstract of Campbell). Neither reference teaches or suggests inducing apoptosis in inflammatory cells for treating atherosclerotic plaque.

Claims 1, 5, 12, 17-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the MERCK MANUAL. Claim 1 is canceled. Claims 5, 12 and 17-20 are currently amended to depend from now-allowable claim 2. The cited pages of the MERCK MANUAL clearly do not suggest inducing apoptosis in immune cells, and the treatments described therein do not relate to the treatment of inflamed atherosclerotic plaque. In fact, the reference states that application of infrared heat is contraindicated in certain conditions including advanced heart disease and peripheral vascular disease. Accordingly, claims 5, 12 and 17-20 are not made obvious by the teachings of the MERCK MANUAL.

Conclusion

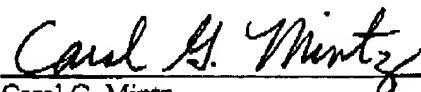
Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art, which have yet to be raised, but which may be raised in the future. In the interest of advancing issuance of a patent, Applicants have chosen to cancel certain claims. Such cancellation is not an admission as to the correctness of any rejection.

Reconsideration of the application and withdrawal of the rejections and objections in light of the foregoing amendments and remarks is respectfully requested. No new matter is introduced by way of the amendments. If any item in the Office Action has been overlooked or is deemed to be

Appl. No. 09/303,313
Amdt. Dated January 20, 2005
Reply to Office Action of October 20, 2004

incompletely addressed, Applicants respectfully request the opportunity to respond. If a petition for extension of time is necessary in order for this paper to be deemed timely filed, please consider this a petition therefor. If any fee is due as a result of the filing of this paper please appropriately charge such fee to Deposit Account Number 03-2769 (ref. 2105-01902) of Conley Rose, P.C., Houston,

Respectfully submitted,



Carol G. Mintz
PTO Reg. No. 38,561
Conley Rose, P.C.
P.O. Box 3267
Houston, Texas 77253-3267
(713) 238-8000

AGENT FOR APPLICANTS